

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**RUFF NEON & LIGHTING MAINTENANCE, INC.**

**Employer**

**and**

**Case No. 8-RC-16528**

**PAINTERS AND ALLIED TRADES DISTRICT  
COUNCIL NO. 6, AFL-CIO, CLC**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.<sup>1</sup>

The Petitioner seeks to represent a bargaining unit of three (3) installers and fabricators employed at the Employer's Mentor, Ohio facility. The Employer maintains that the petitioned-for unit is not appropriate because it does not include one (1) "salesman," who also performs installation and fabrication work. The Petitioner seeks to

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<sup>1</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce with the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(C)(1) and Section 2(6) and (7) of the Act. Neither party filed a post-hearing brief in this matter.

exclude the salesman from the unit, based on its claim that he does not share a sufficient community of interest with the petitioned-for employees.<sup>2</sup>

Based on the entire record in this case, I conclude that the petitioned-for unit is too narrow in scope and this is an inappropriate unit without the inclusion of the salesman, who, as a “dual-function” employee, shares a significant community of interests with the petitioned-for employees. Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time installers (servicemen), fabricators, and salesmen employed by the Employer at its Mentor, Ohio facility, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

## **FACTS**

The evidence reflects that the Employer’s business is the fabrication/assembly and installation/maintenance of signs, mostly neon and other electrical window signs.<sup>3</sup> The fabrication of a neon sign includes pumping and processing neon, and bending neon tubes. The fabrication involves assembling the sign by laying it out, cutting the plastic or plexiglass background and applying vinyl and the neon tubes to the background. The Employer also sometimes purchases other electrical signs such as side cabinets (which are three-dimensional signs with light bulbs in them) from other fabricators and installs them. In addition, a very small part of the Employer’s business involves installing signs

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<sup>2</sup> The precise unit that the Petitioner seeks to represent, as amended at the hearing, is the following: “all full-time and regular part-time installers (servicemen) and fabricators employed by the Employer at its 9287 Mercantile Drive, Mentor, Ohio facility, excluding all salesmen and office clerical employees, and all professional employees, guards and supervisors as defined in the Act.”

<sup>3</sup> The witnesses in this case were the Employer’s owner Thomas A. Ruff; salesman John Krizman, a two-year employee; and installer James Dragon, a six-month employee.

for other fabricators. The Employer's facility consists of a neon shop, a truck bay, a lamp storage area, a kitchen/lunchroom, an extra office/storeroom, the owner's office and restrooms.

Those working at the Employer's facility include its owner Thomas A. Ruff; his 17-year-old son Tommy, who helps out in the summers; and one office clerical employee, Robin Schriber. The parties stipulated that these individuals are not eligible to vote. I accept the stipulation and hereby exclude them. In doing so I note that Section 2(3) of the Act specifically excludes any individual employed by his parent or spouse from inclusion in a bargaining unit. The evidence further reflects that from time to time Thomas Ruff's wife assists in assembling signs and I also exclude her from the unit in accordance with Section 2(3) of the Act.

The Employer employs four (4) other employees: James Dragon and Lou Goff, who work as installers; Vibol Sby, who works as a fabricator; and John Krizman, whose title is "salesman," but who also has installation and assembly duties. As stated previously, the Union seeks to exclude Krizman from the unit based on its belief that he does not share a sufficient community of interest with the remainder of the unit employees.

I note that both parties have stipulated that Krizman is not a supervisor. Accordingly, and in accordance with the evidence, I find that Krizman is not a supervisor under Section 2(11) of the Act. The evidence reflects that Krizman and all the other employees are supervised directly by Thomas Ruff.

Sby, a full-time employee, basically does the Employer's fabrication work, including pumping the neon, processing it, and bending the neon tubes. He also

assembles signs. Sby spends most of his time at the Employer's facility, although from time to time he drops off parts for the installers, using the Employer's pick-up truck.

Dragon and Goff, both full-time employees, do the bulk of the Employer's installation and maintenance work. They each drive one of the Employer's three bucket trucks. The remaining bucket truck is driven periodically by Thomas Ruff or his son, when they do installations. If necessary, the installers dig footers and do welding. Afterwards, they clean up their work areas. In addition to installing signs and making the required electrical hook ups, the installers also go out on maintenance and troubleshooting "runs". They sometimes take measurements for signs, particularly ones that are high in the air and require the use of the bucket truck to reach. After receiving their work orders from Ruff or his secretary and after loading their trucks each morning, Dragon and Goff spend most of their time away from the facility. However, Dragon and Goff at times assemble signs, as do Krizman, Tommy Ruff, and the Mrs. Ruff.

All employees are able to use the kitchen area in the shop, but often of necessity take their lunches and breaks on the road. Even Thomas Ruff spends about 80 percent of his time away from the office. Krizman and Tommy Ruff are also away from the facility.

The evidence reflects that Krizman spends at least 50 percent of his time doing bargaining unit work. In addition to assembling signs, he works away from the facility, performing smaller installation and service jobs and delivering parts. He recently performed all the installations for a number of Record Exchange stores. He does field measurements for low signs, those requiring using a 10-foot ladder or less. Sometimes he follows up behind the other installers and does final finish work, such as raking up debris.

He describes his unit work as a “kind of fill in all the gaps.” Sometimes he helps the installers load their trucks.

The evidence regarding employee wages shows that Dragon, Goff, and Sby are all paid on an hourly basis for their work. Krizman is paid on an hourly basis for unit work, and receives straight commissions for sales. Krizman, a two-year employee, gets \$18/hr. for his unit work; Dragon, a six-month employee, gets \$17/hr. The other employees’ wages are not in evidence. Krizman writes his hours down; the other three unit employees punch a time clock.

The evidence regarding employee benefits shows that Krizman, a two-year employee, receives one week of paid vacation and seven paid holidays. Dragon testified he has no vacation “as of right now,” and has had one paid holiday. Vacation and holiday benefits for the other unit employees were not enumerated. Krizman testified he has his own health policies and life insurance, which he had before he started with the Employer, and has kept. Dragon testified that the Employer is supposed to pay half his health insurance, but is behind three months. Dragon testified that he and other unit employees enjoy no other fringe benefits. Employee qualifications were not enumerated at the hearing, although both Krizman and Dragon have extensive former experience in the sign business.

Krizman’s sales work consists of making sales calls and taking orders directly from businesses that he dealt with when he ran his own company. Krizman also makes “cold calls,” that is, he stops by new businesses to see if they would like to purchase a sign. Other customer calls that come to the shop go directly to Thomas Ruff’s desk. Upon orders from Ruff, Krizman will contact Ruff’s customers and take orders and

measurements. As stated, Krizman receives a commission rather than hourly pay for his sales work.

### **ANALYSIS**

In determining whether employees have a community of interest, the Board looks at all relevant factors, such as employees skills, qualifications, duties, supervision, interchange of work and personnel, employee contact, working conditions, Employer organization and integration of work functions, and employee wages and benefits.

**Kalamazoo Paper Box Corporation, 136 NLRB 134, 137 (1962); Continental Baking Company, 99 NLRB 777, 782 (1952).** No one factor has controlling weight. **Airco, Inc., 273 NLRB 348, 348 (1984).**

A union is not required to represent the most comprehensive or largest unit of employees of an Employer unless “an appropriate unit compatible with that requested unit does not exist.” **The Aerospace Corporation, 331 NLRB 561, 569 (2002), citing P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963); accord: Acme Markets, Inc. 328 NLRB 1208 (1999).** In this regard, the Board is reluctant to create “a residual unit of one unrepresented employee who possesses no community of interest with the other excluded employees.” **MDS Courier Services, Inc. 242 NLRB 405, 406 (1979).**

A “dual function” employee is one who spends part of his/her time doing bargaining unit work and part of his/her time doing non-unit work. The inclusion of a dual-function employee within a particular unit is akin to the inclusion of a regular part-time employee, and focuses on the regular performance of a substantial amount of unit work. **Fleming Industries, 282 NLRB 1030 fn.1 (1987).** See also **Berea Publishing Co., 140 NLRB 516 (1963); Wilson Engraving Co., 257 NLRB 333 (1980).** A

“substantial” amount of work may be less than a majority of an employee’s time. **Ansted Center**, 326 NLRBB 1208 (1998); **Air Liquide America Corp.** 324 NLRB 661 (1997).

The evidence reflects that the Employer’s business is small and has a high degree of functional integration and exchange of personnel between its various facets. All employees, except the owner and his secretary, perform some assembly work. All employees, except the secretary, sometimes deliver parts. Most of the Employer’s personnel, including the owner and his son, perform some installations. Most employees load trucks. Thomas Ruff and Krizman handle sales.

As stated previously, the sole issue to be decided in this hearing is whether or not the unit sought would be appropriate without the inclusion of Krizman. As stated, I find that the unit would not be appropriate without Krizman. Krizman is a classic “dual function” employee, in that he spends at least 50 percent of his time doing bargaining unit work and about 50 percent of his time doing other, in this case sales, work. See **Berea Publishing**, **supra**. Krizman’s unit work includes a variety of tasks that the other unit employees routinely perform: installing signs, taking measurements for signs, delivering parts, trouble-shooting, making repairs, doing clean-up, and assembling signs. Accordingly, he meets the test of regularly performing a substantial amount of unit work. See **Fleming Industries**, **supra**. The minor differences between Krizman’s wages and benefits and those of the other employees are not significant enough to affect his placement in the unit. Moreover, because he has no community of interest with excluded employees, i.e. the owner’s family and the office clerical, not placing him in the unit would leave a residual unit of one unrepresented employee who has no community of interest with r excluded employees. See **MDS Courier Services**, **supra**.

Accordingly, I find that Krizman must be included in the bargaining unit in order to make it an appropriate unit and I shall so include him.<sup>4</sup>

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by July 23, 2003.

Dated at Cleveland, Ohio this 9<sup>th</sup> day of July 2003.

/s/ Frederick J. Calatrello

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

460-5067-4901

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<sup>4</sup> The Petitioner agreed to precede to an election in any unit found appropriate herein.